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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

25.2.72

LOK SABHA

The following Bills were introduced in Lok Sabha on the 18th November, 1971:—

BILL No. 131 OF 1971

A bill to amend the Commissions of Inquiry Act, 1952.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. This Act may be called the Commissions of Inquiry (Amendment) Act, 1971. Short title.

2. In section 1 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as the principal Act), for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 1.

"(2) It extends to the whole of India:

Provided that it shall apply to the State of Jammu and Kashmir only in so far as it relates to inquiries pertaining to matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the Constitution as applicable to that State.".

3. In section 2 of the principal Act, to clause (*a*), the following proviso shall be added, namely:— Amendment of section 2.

'Provided that in relation to the State of Jammu and Kashmir, this clause shall have effect subject to the modification that—

(*a*) in sub-clause (*i*) thereof, for the words and figures "List I or List II or List III in the Seventh Schedule to the Constitution", the words and figures "List I or List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir" shall be substituted;

(*b*) in sub-clause (*ii*) thereof, for the words and figures "List II or List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir" shall be substituted.'.

Insertion of new section 2A.

4. After section 2 of the principal Act, the following section shall be inserted, namely:—

Construction of references to laws not in force in the State of Jammu and Kashmir.

"2A. Any reference in this Act to a law, which is not in force in the State of Jammu and Kashmir, shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.".

Amendment of section 3.

5. In section 3 of the principal Act, after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(*4*) The appropriate Government shall cause to be laid before the House of the People or, as the case may be, the Legislative Assembly of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (*1*) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government.".

Amendment of section 4.

6. In section 4 of the principal Act, in clause (*a*), for the words "summoning and enforcing the attendance of any person", the words "summoning and enforcing the attendance of any person from any part of India" shall be substituted.

Amendment of section 5.

7. In section 5 of the principal Act, in sub-section (*2*), the words and figures "and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code" shall be inserted at the end. 45 of 1860.

Insertion of new section 5A.

8. After section 5 of the principal Act, the following section shall be inserted, namely:—

Power of Commission to utilise the services of certain officers and investigation agencies for conducting

"5A. (*1*) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services,—

(*a*) in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be; or

(*b*) in the case of a Commission appointed by the State Government, of any officer or investigation agency of the State Government or Central Government with the concurrence of the State Government or the Central Government, as the case may be.

investigation pertaining to inquiry.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The provisions of section 6 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency, whose services are utilised under sub-section (1), shall investigate into any matter pertaining to the inquiry and submit a report thereon (hereafter in this section referred to as the investigation report) to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusions, if any, arrived at in the investigation report submitted to it under sub-section (4), and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.".

Insertion of new section 6A.

9. After section 6 of the principal Act, the following section shall be inserted, namely:—

Persons not obliged to disclose secret process of manufacture of goods in certain cases.

"6A. Except in cases where a Commission is expressly required to inquire into the process of manufacture of any goods, nothing in this Act shall be deemed to compel any person giving evidence before the Commission to disclose any secret process of manufacture thereof.".

Substitution of new section for section 7.

10. For section 7 of the principal Act, the following section shall be substituted, namely:—

Commission to cease to exist when so notified.

"7. (1) The appropriate Government may, by notification in the Official Gazette, declare that—

(a) a Commission (other than a Commission appointed in pursuance of a resolution passed by the House of the People or, as the case may be, the Legislative Assembly of the State) shall

cease to exist, if it is of opinion that the continued existence of the Commission is unnecessary;

(*b*) a Commission appointed in pursuance of a resolution passed by the House of the People or, as the case may be, the Legislative Assembly of the State, shall cease to exist if a resolution for the discontinuance of the Commission is passed by the House of the People or, as the case may be, the Legislative Assembly of the State.

(*2*) Every notification issued under sub-section (*1*) shall specify the date from which the Commission shall cease to exist and on the issue of such notification, the Commission shall cease to exist with effect from the date specified therein.".

Amendment of section 8.

11. In section 8 of the principal Act, the words "and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members" shall be omitted.

Insertion of new sections 8A, 8B and 8C.

12. After section 8 of the principal Act, the following sections shall be inserted, namely:—

Inquiry not to be interrupted by reason of vacancy or change in the constitution of the Commission.

"8A. (*1*) Where the Commission consists of two or more members it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its members.

(*2*) Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place.

Persons likely to be prejudicially affected to be heard.

8B. If, at any stage of the inquiry, the Commission,—

(*a*) considers it necessary to inquire into the conduct of any person; or

(*b*) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry.

the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witness is being impeached.

Right of cross-examination and representation by legal practitioner.

8C. The appropriate Government, every person referred to in section 8B and, with the permission of the Commission, any other person whose evidence is recorded by the Commission,—

(*a*) may cross-examine a witness other than a witness produced by it or him;

(*b*) may address the Commission: and

(c) may be represented before the Commission by a legal practitioner or, with the permission of the Commission, by any other person.".

Insertion of new section 10A.

13. After section 10 of the principal Act, the following section shall be inserted, namely:—

Penalty for acts calculated to bring the Commission or any member thereof into disrepute.

"10A. (*1*) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.

5 of 1898.

(*2*) The provisions of section 198B of the Code of Criminal Procedure, 1898 shall apply in relation to an offence under sub-section (*1*) as they apply in relation to an offence referred to in sub-section (*1*) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction,—

(*a*) in the case of a Commission, or member of a Commission appointed by the Central Government, of the Central Government; or

(*b*) in the case of a Commission, or member of a Commission appointed by the State Government, of the State Government.".

Amendment of section 12.

14. In section 12 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

Principal Act as amended to come into force in Jammu and Kashmir and in certain districts in Nagaland.

15. The principal Act, as amended by this Act, shall come into force in the State of Jammu and Kashmir and in the districts of Kohima and Mokokchung in the State of Nagaland on such date as the Central Government may, by notification in the Official Gazette, appoint.

STATEMENT OF OBJECTS AND REASONS

Certain difficulties and deficiencies experienced in the working of the Commissions of Inquiry Act, 1952 were referred to the Law Commission for suggesting suitable amendments to the Act. Taking into account the importance of the Act and the need for a proper system of inquiries, the Law Commission undertook a comprehensive examination of the entire Act and made a number of recommendations in their Twenty-Fourth Report for the revision of the Act in several respects.

2. The main recommendations of the Law Commission have generally been accepted by Government after considering the views expressed on those recommendations by the State Governmnets, Union territory Administrations and the Ministries of the Government of India. To give effect to the accepted recommendations of the Law Commission, the Commissions of Inquiry (Amendment) Bill, 1969 was introduced in the Lok Sabha on 21st November 1969 and was later on referred to a Joint Committee of Parliament. The Joint Committee submitted their report to both the Houses of Parliament on 9th November 1970. However, on the dissolution of the Fourth Lok Sabha, the Bill as reported by the Joint Committee lapsed. The present Bill seeks to give effect to the provisions of the Bill as reported by the Joint Committee with some minor modification which appears to Government to be necessary.

3. The notes on clauses explain the provisions of the Bill in detail.

RAM NIWAS MIRDHA.

NEW DELHI;
The 9th September, 1971.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 3/4/71-Judl., dated the 6th November, 1971 from Shri Ram Niwas Mirdha, Minister of State in the Ministry of Home Affairs to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Commissions of Inquiry (Amendment) Bill, 1971, recommends consideration of the Bill in the Lok Sabha under article 117 (3) of the Constitution of India.

Notes on clauses

(In these notes, the expression "Report" means the Twenty-Fourth Report of the Law Commission of India on the Commissions of Inquiry Act, 1952.)

Clauses 2 *and* 3.—The Commissions of Inquiry Act, 1952 does not, at present, extend to the State of Jammu and Kashmir and to the districts of Kohima and Mokokchung in the State of Nagaland. The clauses seek to extend the Act to the State of Jammu and Kashmir and to the aforesaid districts. However, in relation to the State of Jammu and Kashmir, the Act will apply only in so far as it relates to inquiries pertaining to matters relatable to entries enumerated in List I and List III in the Seventh Schedule to the Constitution as applicable to that State.

Clause 4.—Certain laws referred to in the Commissions of Inquiry Act, 1952 are not in force in the State of Jammu and Kashmir. The clause provides that any reference to such a law shall, in relation to the State of Jammu and Kashmir, be constructed as a reference to the corresponding law, if any, in force in that State. This provision has become necessary consequent on the proposed extension of the Act to the State of Jammu and Kashmir.

Clause 5.—Judging from the experience gained in the working of the Commissions of Inquiry Act, 1952, it is considered desirable to provide expressly for the filling up of vacancies in the membership of the Commission, whenever the Government thinks it necessary or expedient to do so. The new sub-section (3) to section 3 of the Act seeks to give effect to this proposal (*vide* paragraph 26 of the Report). During the course of evidence given before the Joint Committee, it was brought to their notice that many a time reports of Commissions of Inquiry on important issues of national interest could not see the light of the day even though considerable money from public funds had been spent thereon. The Joint Committee, therefore, considered it necessary that a specific provision should be made in the Act requiring the appropriate Government to cause the report of every Commission of Inquiry to be laid before the House of the People or the Legislative Assembly, as the case may be together with a memorandum in regard to the action taken thereon, within a period of six months from the date of the submission of the report. The new sub-section (4) to section 3 of the Act seeks to give effect to this recommendation of the Joint Committee.

Clause 6.—Section 4 of the Act authorities the Commission to summon and enforce the attendance of any person. It does not, however, specify the territorial jurisdiction for the Commission in his behalf and, consequentially, it may be argued that the restriction under Order XVI, rule 19 of the Code of Civil Procedure, 1908, would be attracted, since, under section 4, a Commission, in summoning witnesses, has the same powers as a civil court. In view of the different nature of the work assigned to a Commission of Inquiry, it is considered that this restriction should not apply to Commissions appointed under the Act. The clause seeks to amend section 4 suitably so as to empower the Commission to summon and enforce the attendance of any person from any part of India (*vide* paragraph 27 of the Report).

Clause 7.—This clause seeks to amend sub-section (2) of section 5 of the Act casting an obligation on the person required by the Commission to furnish any information under the sub-section, to furnish such information (*vide* paragraph 28 of the Report).

Clause 8.—This clause seeks to insert a new section 5A in the Act. Under this new section, a Commission appointed by the Central Government is empowered to utilise the services of any officer or investigation agency of the Central Government or, with the concurrence of the State Government concerned, the services of any officer or investigating agency of that State Government. Correspondingly a Commission appointed by a State Government may utilise the services of any officer or investigating agency of the State Government or with the concurrence of the Central Government, the services of any officer or investigating agency of the Central Government. Provision has also been made to the effect that for the purpose of such investigations any officer or investigating agency whose services are utilised may, subject to the direction and control of the Commission, summon and enforce the attendance of any person and examine him; require the discovery and production of any document; and requisition any public record or copy thereof from any office. The officer or agency, whose services are utilised, shall after investigating into any matter pertaining to an inquiry submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf. The section further provides that the Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted, or assisted in, the investigation), as it deems fit (*vide* paragraph 17 of the Report).

Clause 9.—The clause seeks to insert a new section 6A in the Act. This new section provides, in the interests of trade, that nothing in the Act would render it compulsory for any person giving evidence before the Commission to disclose any secret process of manufacture of any goods, except in cases where the Commission is expressly required to inquire into the process of manufacture of any goods (*vide* paragraph 32 of the Report).

Clause 10.—In view of the recommendation of the Joint Committee to divest the Government of the power to discontinue a Commission of Inquiry before it has submitted its report, the clause seeks to amend section 7 of the Act suitably so as to ensure that a Commission appointed in pursuance of a resolution passed by the House of the People or the Legislative Assembly of a State, shall not cease to exist until a resolution for the discontinuance of the Commission has been passed by the House of the People or, as the case may be, the Legislative Assembly of the State.

Clause 11 *and* 12.—Clause 11 seeks to make a consequential amendment to section 8 of the Act.

Clause 12 seeks to insert three new sections 8A, 8B and 8C in the Act. The new section 8A provides that an inquiry shall not be interrupted by reason of any vacancy in, or change in the constitution of, the Commission. Under the new section 8B, a Commission of Inquiry is required to give to every person, whose conduct the Commission considers it necessary to inquire into and to every person whose reputation, in the opinion of the Commission, is likely to be prejudicially affected by the inquiry, a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence. The new section 8C confers on the appropriate Government and on persons whose conduct the Commission considers it necessary to inquire into or whose reputation, in the opinion of the Commission, is likely to be prejudicially affected by the inquiry, the right to cross-examine witnesses and to be represented before the Commission by a legal practitioner or, with the consent of the Commission, by any other person.

Clause 13.—This clause seeks to insert a new section 10A in the Act. The new section provides for penalty for acts calculated to bring the Commission or any member thereof into disrepute. The penalty proposed is simple imprisonment for a term which may extend to six months or fine or both. The provisions of section 198B of the Code of Criminal Procedure, 1898 have been made applicable to an offence under this new section subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the appropriate Government (*vide* paragraph 30 of the Report).

Clause 14.—The clause seeks to insert a new sub-section to section 12 of the Act making provision for the laying of rules made under the Act before Parliament.

Clause 15.—The clause empowers the Central Government to bring the Act (as proposed to be amended) into force in the State of Jammu and Kashmir and in the districts of Kohima and Mokokchung in the State of Nagaland on a date to be appointed by the Central Government. It is considered necessary to have such a provision in view of the fact that it is possible to contend that the power conferred on the Central Government under section 1(3) of the Act has already been exhausted.

FINANCIAL MEMORANDUM

Clause 6 of the Bill seeks to empower a Commission of Inquiry to summon and enforce the attendance of any person as a witness from any part of India. This may call for some extra expenditure on the grant of travelling and daily allowances to witnesses.

2. Clause 8 of the Bill seeks to empower a Commission of Inquiry to utilise the services of certain officers and investigation agencies for conducting investigation pertaining to the inquiry. Such assistance may possibly be made available to the Commission without entailing any extra expenditure. Depending upon the nature and duration of the investigation required, occasions could, however, arise when it may become necessary to incure extra expenditure on the appointment of or replacement for, the officers whose services are made available to the Commissions of Inquiry.

3. No accurate estimate can be made of the extra expenditure from the Consolidated Fund of India which may result from the proposed amendments. It is, in any case, not likely to exceed rupees sixty thousand a year. No non-recurring expenditure is involved.

BILL NO. 129 OF 1971

A bill further to amend the Forward Contracts (Regulation) Act, 1952.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Forward Contracts (Regulation) Amendment Act, 1971.

(*2*) It shall be deemed to have come into force on the 11th day of October, 1971.

74 of 1952.

Amendment of section 2.

2. In section 2 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the principal Act),—

(*a*) in clause (c), the words "at a future date" shall be omitted;

(*b*) to clause (*i*), the following proviso and *Explanation* shall be added, namely:—

'Provided that where any such contract is performed either wholly or in part,—

(*1*) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(*2*) by the realisation of any sum of money, being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(3) by any other means whatsoever,

and as a result of which the actual tendering of the goods covered by the contract or the payment of the full price therefor is dispensed with, then, such contract shall not be deemed to be a ready delivery contract.

Explanation.—For the purposes of this clause,—

(i) "bank" includes any banking company as defined in the Banking Regulation Act, 1949, a co-operative bank as defined in the Reserve Bank of India Act, 1934, the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970; 10 of 1949. 2 of 1934. 5 of 1970.

(ii) "commission agent" means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract, in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract.'.

Repeal and saving

3. (1) The Forward Contracts (Regulation) Amendment Ordinance, 1971 is hereby repealed. 11 of 1971.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Forward Contracts (Regulation) Act, 1952 (74 of 1952) was enacted with a view to regulate matters relating to forward contracts, the prohibition of options in goods and matters connected therewith. Under this Act, Government have regulated or banned forward trading in several commodities in order to check undue speculations in the prices of those commodities. Lately it has been observed that the speculative elements have taken resort to the ready market itself and conducted their business in forward contracts in banned or regulated commodities under the guise of ready delivery contracts. A ready delivery contract is intended to result in actual delivery of goods and payment of full price therefor within a period of eleven days. The method employed by the parties is to enter into an apparently ready delivery contract for a week or ten days thus keeping themselves strictly within the law and then to square it up by entering into an opposite contract. The next day or a day thereafter a seemingly new contract for the same quantity and variety of goods and with the same party is entered into afresh and so squared up at the end of the next period of seven or ten days by an opposite contract and so on. Thus a contract is carried on with the same party for the same quantity and quality of goods for as long as both the parties desire. This method corresponds remarkably with the mechanics of futures trading where a contract having been entered into, say, for three months is usually cleared every week or ten days or fortnight when the differences between the contract rate and the prevailing rate are duly cleared.

2 The misuse of ready delivery contracts has been indulged in by the parties because of certain lacunae in the definitions of the expressions "forward contract" and "ready delivery contract" in sections 2(c) and 2(i) respectively of the Forward Contracts (Regulation) Act, 1952. Government have been advised to the effect that the fact that there was no actual delivery of goods within the stipulated period of eleven days but there was settlement, by payment of differences or set-off, does not convert a ready delivery contract into a forward contract. The Government was, therefore, unable to check the misuse of ready delivery contracts under the existing Act.

3. In order to eradicate the misuse of ready delivery contracts, it was considered necessary to amend suitably the definitions of the expressions "forward contract" and "ready delivery contract" contained in the Act. Since immediate action had to be taken in this behalf, the Forward Contracts (Regulation) Amendment Ordinance, 1971 was promulgated by the President on the 11th October, 1971.

4. The present Bill is intended to replace the said Ordinance.

NEW DELHI; MOINUL HAQUE CHOUDHARY.

The 26th October, 1971.

S. L. SHAKDHER,
Secretary.

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